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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,415	01/30/2004	Andrew G. Tucker	15437-0591	8014
45657 7590 05/27/2009 HICKMAN PALERMO TRUONG & BECKER, LLP AND SUN MICROSYSTEMS, INC. 2055 GATEWAY PLACE SUITE 550 SAN JOSE, CA 95110-1089				
EXAMINER VAUGHAN, MICHAEL R				
ART UNIT 2431		PAPER NUMBER		
MAIL DATE 05/27/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/769,415

**Applicant(s)**

TUCKER ET AL.

**Examiner**

MICHAEL R. VAUGHAN

**Art Unit**

2431

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-53 is/are pending in the application.
- 4a) Of the above claim(s) 30-33, 36, 38, 39, 43-46, 49, 51 and 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-29, 34, 35, 37, 40-42, 47, 48, 50 and 53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The instant application having Application No. 10/769415 is presented for examination by the examiner. Applicant's election without traverse of species grouping IV in the reply filed on 3/19/09 is acknowledged. Groups I-III are non-elected. Therefore the generic claims 27-29, 37, 41, 42, and 50 are being examined along with the claims of group IV, 34, 35, 40, 47, 48, and 53. As such claims 27-29, 34, 35, 37, 40-42, 47, 48, 50, 53 have been examined on the merits and are pending.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 28, 29, 34, 35, 37, and 40 are rejected under 35 U.S.C. 101 based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim whose steps could be implemented in software. Thus, to qualify as a §

101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101.

*Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.*

Claims 41 and 42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to computer readable medium. In the specification on page 33, computer readable medium is defined to include carrier waves. Signals and waves do not fall into one of the statutory classes of invention. As such, the specification must be void of any disclosure which relates signals to computer readable media.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 27-29, 34, 35, 37, 40-42, 47, 48, 50, 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 27, 28, and 41, the first limitation states that processes are in the first non-global zone. Then later in the claims, the first process is defined as executing in association with the first non-global zone. Therefore it is both indefinite and broader to say the first process is in association with because that does not necessarily mean said first process is in the non-global zone. It is also unclear then whether or not, the first process is one of the processor mentioned in the non-global zone. If it is not, there needs to be an explicit distinction between the two entities. The independent claims are likewise rejected for at least the same reasons. Specifically when mentioning the second process, "in association", does not solidify the relationship between the second process and the global zone. Technically the second process could logically exist in the same place as the first process because neither is definitively placed into a zone. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 27-29, 34, 35, 37, 40-42, 47, 48, 50, 53 are rejected under 35 U.S.C. 102(e) as being anticipated by USP Application Publication 2003/0172109, to Dalton et al., hereinafter Dalton.

As per claim 27, Dalton teaches an apparatus, comprising:

means for establishing, in an operating system environment controlled by a single operating system kernel instance, a global zone [sealed; 0069] and at least one a first non-global zone [compartment] for isolating processes in the first non-global zone from processes in other non-global zones (0021);

means for receiving, from a first process executing in association with the first non-global zone, a first request to perform an a first operation [request; 0061];

means for determining in response to the first request whether performing the first operation enables the first process to obtain additional privileges for which the first process is not authorized (0061); and

means for denying the first request if performing the first operation enables the first process to obtain the additional privileges for which the first process is not authorized (0061).

Claims 28 and 41 are rejected for the same reasons as claim 27.

As per claims 29 and 42, Dalton teaches each non-global zone has a set of allowable privileges [rules] for processes executing within the non-global zone (0027).

As per claims 34 and 47, Dalton teaches performing the first operation comprises accessing an object, the method further comprising: determining whether the first process has permission to access the object [preventing transitioning to root and restricting a process to only those objects in its compartment; 0025].

As per claims 35 and 48, Dalton teaches the first operation includes one of: mounting/unmounting a file system, overriding file system permissions, binding to a privileged network port, and controlling other processes with different user identifiers [0043; binding to a privileged network port].

As per claims 37 and 50, Dalton teaches receiving, from a second process executing in association with the global zone [sealed], a second request to perform a second operation (0061);

in response to the second request, determining whether performing the second operation enables the second process to obtain additional privileges for which the second process is not authorized (0061); and

denying the second request if performing the second operation enables the second process to obtain additional privileges for which the second process is not authorized [a second process with has a sealed label indicated its restricted zone, is prevented from transitioning to an admin level state, thus preventing it from acquiring additional privileges; 0061].

As per claims 40 and 53, Dalton teaches the second operation includes one of: modifying all process privileges, writing to system administration file, opening device holding kernel memory, modifying operating system code, accessing file systems restricted to root user, setting the system clock, changing scheduling priority of an executing process, reserving resources for an application, directly accessing a network layer and loading kernel modules [0061-0063; application is preventing from gaining admin level privileges].

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is listed on the enclosed PTO-892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL R. VAUGHAN whose telephone number is (571)270-7316. The examiner can normally be reached on Monday - Thursday, 7:30am - 5:00pm, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on 571-272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.



For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. R. V./

Examiner, Art Unit 2431

/William R. Korzuch/  
Supervisory Patent Examiner, Art Unit 2431